

AO 120 (Rev. 2/99)

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court _____ on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. CV 12-03846 NC	DATE FILED 7/23/12	U.S. DISTRICT COURT 450 Golden Gate Avenue, 16 th Floor San Francisco, CA 94102
PLAINTIFF PAYMENT PROCESSING, INC		DEFENDANT ISAAC Y. JENKINS, ET AL
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 SEE COMPLAINT		
2 3,803,814		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wiekling	(BY) DEPUTY CLERK Alfred Amistoso	DATE July 25, 2012
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

E-FILING

ORIGINAL
JUL 2 2007
Clerk, U.S. District Court
Northern District of California
San Jose

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Attorneys for Plaintiff PAYMENT PROCESSING
INC. d.b.a. PAYPROS, a California corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NC

PAYMENT PROCESSING, INC., d.b.a.
PAYPROS, a California corporation,

Plaintiff,

v.

ISAAC Y. JENKINS, individually and
d.b.a. IKE'S AND DEE'S WORLD OF
ENTERPRISES d.b.a. PAYMENT
PROCESSING SOLUTIONS a/k/a
PAYPROSOL; DENISE E. LOVEC-
JENKINS a/k/a DENISE ELKINS,
individually and d.b.a. IKE'S AND DEE'S
WORLD OF ENTERPRISES d.b.a.
PAYMENT PROCESSING SOLUTIONS
a/k/a PAYPROSOL and DOES 1 - 20,
inclusive,

Defendants.

CASE NO. **CV 12-03846**

COMPLAINT FOR:

- (1) TRADEMARK INFRINGEMENT;**
- (2) UNFAIR COMPETITION;**
- (3) UNFAIR BUSINESS PRACTICES;**
- (4) DILUTION; and**
- (5) INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Plaintiff Payment Processing, Inc. a/k/a PayPros ("Plaintiff" or "PayPros") hereby
complains and alleges as follows against defendant Issac Y. Jenkins, individually and d.b.a. Ike's
and Dee's World of Enterprises d.b.a. Payment Processing Solutions a/k/a PayProSol, defendant
Denise E. Lovec-Jenkins a/k/a Denise Elkins, individually and d.b.a. Ike's and Dee's World of
Enterprises d.b.a. Payment Processing Solutions a/k/a PayProSol and defendant Does 1-20
(hereinafter, together "Defendants"):

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1 integrated payment processing products and services in the U.S. and international markets. As a
2 result of Plaintiff's extensive promotion, marketing and advertising efforts to customers of its
3 quality and reliable electronic payment processing solutions, Plaintiff is considered an industry
4 leader for feature-rich, reliable and secure electronic payment solutions for businesses.

5 6. Plaintiff is informed and believes, and thereon alleges, that defendant Isaac Y.
6 Jenkins ("I. Jenkins") is an individual residing in San Diego, California. Plaintiff is further
7 informed and believes that I. Jenkins has been engaged in providing payment processing services
8 since 2006 and is the co-founder of Ike's and Dee's World of Enterprises and the co-founder of
9 Payment Processing Solutions a/k/a PayProSol. Plaintiff is further informed and believes that I.
10 Jenkins holds himself out to be a service provider for bankcard services, including, but not limited
11 to credit card processing, mobile credit card processing, debit card processing and e-commerce,
12 doing business as Ike's and Dee's World of Enterprises and as Payment Processing Solutions
13 a/k/a PayProSol.

14 7. Plaintiff is informed and believes and thereon alleges, that defendant Denise E.
15 Lovec-Jenkins a/k/a Denise Elkins ("D. Jenkins") is an individual residing in San Diego,
16 California. Plaintiff is further informed and believes that D. Jenkins has been engaged in
17 providing payment processing services since 2006 and is the co-founder of Ike's and Dee's World
18 of Enterprises and the co-founder of Payment Processing Solutions a/k/a PayProSol. Plaintiff is
19 further informed and believes that D. Jenkins holds herself out to be a service provider for
20 bankcard services, including, but not limited to credit card processing, mobile credit card
21 processing, debit card processing and e-commerce, doing business as Ike's and Dee's World of
22 Enterprises and as Payment Processing Solutions a/k/a PayProSol.

23 8. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
24 Does 1 through 20, and therefore sues these defendants by such fictitious names. Plaintiff will
25 amend this complaint to allege the true names and capacities of said Doe Defendants when
26 ascertained. Plaintiff is informed and believes, and thereon alleges, that each of these fictitiously
27 named defendants is responsible in some manner for the acts and conduct alleged herein and that
28 such defendants proximately caused Plaintiff harm as alleged herein.

9. Plaintiff is informed and believes, and thereon alleges, that each of the defendants is and at all times mentioned herein was, the agent, employee or representative of each of the other defendants, that each defendant's actions as alleged herein were within the scope and authority of such agency, employment or representation, and that each defendant acted with the knowledge, permission, authority, consent and/or ratification of each other defendant. As a result, each defendant is jointly and severally responsible and liable for the acts of each other defendant as alleged herein.

GENERAL ALLEGATIONS

10. At all material times herein, Plaintiff has been and is engaged in the business of providing integrated online credit card processing and electronic payment services, including the sale and licensing of hardware, software and related technical and business support services necessary to effectively maintain integrated electronic payment processing systems, under the trade name and mark PAYPROS (the "Mark").

11. Plaintiff and its predecessors have used the Mark continuously in connection with its business since 1996. Plaintiff registered the Mark with the United States Patent and Trademark Office (the "PTO") on June 15, 2010, under Registration Number 3,803,814. Plaintiff owns the registration, which is and continues to be in full force and effect. A true and correct copy of the Plaintiff's certificate of registration for the Mark is attached hereto as **Exhibit A**. Plaintiff has not given any of the Defendants permission to use the PAYPROS Mark.

12. Plaintiff's products and services have been and continue to be extensively advertised and sold throughout the United States, including in California, under the Mark. During the 16 years Plaintiff has offered and sold its products and services under the Mark, the reputation and goodwill associated with the Mark has continuously grown throughout the electronic payments technology industry and among users of electronic payment services. Plaintiff has partnered with over 1,700 businesses and provides its integrated payment processing services to over 54,000 customers, both in the U.S. and abroad. By virtue of Plaintiff's extensive marketing, promotion and sales, Plaintiff has built substantial goodwill in the Mark such that the public and industry have come to associate the Mark with Plaintiff's quality payment processing products

1 and professional services, and to distinguish Plaintiff's products and services from similar
2 products and services offered and sold by others.

3 13. Plaintiff is informed and believes, and thereon alleges, that I. Jenkins and D.
4 Jenkins have been using PAYPROSOL, which is nearly identical to Plaintiff's PAYPROS Mark,
5 as a trade name and mark to identify their products and services in connection with the marketing
6 and sales in interstate commerce of their payment processing products and services, including
7 credit card processing, debit card processing and e-commerce.

8 14. Plaintiff is informed and believes, and thereon alleges further, that Plaintiff and
9 Defendants engage in similar services and goods, namely, providing products and services related
10 to electronic payment systems and support for businesses.

11 15. Plaintiff is informed and believes, and thereon alleges further, that Plaintiff and
12 Defendants have common markets, common customers, and common channels of sale for their
13 respective goods and services.

14 16. Plaintiff is further informed and believes, and thereon alleges, that Defendants'
15 marketing and sales efforts using the trade names and marks "Payment Processing Solutions" and
16 "PAYPROSOL" have caused or are likely to cause confusion in the marketplace as to the source
17 of services, or the existence of a licensing or sponsorship arrangement between Plaintiff and the
18 Defendants.

19 17. Plaintiff is informed and believes that Defendants have been and continue to
20 market products and services that are substantially similar to Plaintiff's goods and services sold
21 under Plaintiff's Mark across the country. This is evidenced by, among other things, Defendants'
22 interactive websites found at www.payprosol.com, www.meetup.com/PayProSol, [www.ike-n-](http://www.ike-n-dee-world.com)
23 [dec-world.com](http://www.ike-n-dee-world.com) and www.facebook.com/Ikes.n.Dees#!/Ikes.n.Dees (the "Websites").

24 18. Plaintiff is informed and believes, and thereon alleges further, that there are
25 customers and prospective customers who are or have been confused and misled by Defendants'
26 use of the PAYPROSOL mark, and/or who are likely to be confused, misled or deceived by
27 Defendants' continued use of the PAYPROSOL mark, as to the source, sponsorship, and quality
28 of the Defendants' goods and services.

1 19. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
2 hereto, Defendants had actual knowledge of Plaintiff's ownership and use of Plaintiff's
3 PAYPROS Mark in commerce, and the goods and services sold by Plaintiff under the Mark.
4 Despite such knowledge, Defendants have failed and refused, and continue to fail and refuse, to
5 cease use of the PAYPROSOL mark. Defendants' actions therefore constitute a deliberate,
6 intentional attempt to trade on Plaintiff's reputation and goodwill.

7 20. Plaintiff has been injured by Defendants' infringement of the PAYPROS Mark in
8 that the distinctiveness of the trademark has been diluted and tarnished by the false association
9 with Defendants' goods and services.

10
11 **FIRST CAUSE OF ACTION**
12 **TRADEMARK INFRINGEMENT**
 (Common Law)

13 21. Plaintiff incorporates and realleges the allegations set forth in paragraphs 1
14 through 20 of this complaint as though fully set forth herein.

15 22. Plaintiff's Mark, PAYPROS, was first adopted by Plaintiff to identify its goods
16 and services in 1996, and has been registered with the PTO since June 15, 2010.

17 23. Plaintiff currently offers, and has a long and established history of offering, a wide
18 range of payment processing products and services under the PAYPROS Mark. Through
19 favorable acceptance and recognition, the Mark has come to be associated in the public, press,
20 electronic payments technology industry and users of electronic payment services with Plaintiff,
21 has become an asset of substantial value to Plaintiff, and a symbol of its quality services, products
22 and goodwill.

23 24. Plaintiff has spent significant time and money in establishing the PAYPROS Mark
24 in the minds of customers, prospective customers and the electronic payments technology
25 industry as identifying Plaintiff as the source of high quality products and services.

26 25. Notwithstanding Plaintiff's prior common law and statutory rights in its Mark,
27 Defendants, with knowledge of Plaintiff's ownership of the Mark, have adopted and used the
28 trade name and mark PAYPROSOL without Plaintiff's consent in connection with the sale,

1 offering for sale, distribution and advertising of electronic payment processing goods and
2 services. Defendants' goods and services have been promoted, advertised and distributed through
3 various means including, without limitation, sales and solicitations through Defendants'
4 Websites, including within this judicial district.

5 26. Defendants' infringing use of the PAYPROSOL mark has and will continue to
6 cause confusion in the minds of the public, press and entertainment and payments technology
7 industry, leading customers and/or prospective customers to falsely believe that Plaintiff has
8 approved, sponsored, or otherwise associated itself with Defendants.

9 27. As a direct and proximate result of Defendants' acts and conduct, Plaintiff is
10 informed and believes, and thereon alleges, that customers and prospective customers have been
11 confused, misled, deceived and mistaken as to the source or sponsorship of Defendants'
12 unauthorized products and services, and have been deterred from purchasing Plaintiff's products
13 and services, in disruption of Plaintiff's business activities. Plaintiff has therefore been damaged
14 and is likely to suffer further damage in an amount to be proven at trial, but in excess of the
15 minimum jurisdiction of this Court. In particular, Plaintiff is entitled to, without limitation,
16 damages for its loss of sales and goodwill, as well as recovery of any and all profit derived by
17 Defendants through their wrongful acts.

18 28. As Defendants' acts are likely to continue, the award of money damages alone will
19 not adequately compensate Plaintiff. By their use of the PAYPROSOL mark, Defendants have
20 caused, and will continue to cause irreparable harm, damages and injury to Plaintiff. Plaintiff's
21 injuries will continue unless restrained by order of this Court. Accordingly, Plaintiff is entitled to
22 preliminary and permanent injunctive relief.

23 WHEREFORE, Plaintiff prays for judgment as set forth below.

24 **SECOND CAUSE OF ACTION**
25 **UNFAIR COMPETITION**
(15 U.S.C. §1125)

26 29. Plaintiff incorporates and realleges the allegations set forth in paragraphs 1
27 through 28 of this complaint as though fully set forth herein.

1 30. Defendants' conduct described and alleged in this complaint constitutes unfair
2 competition and fraudulent business practices in violation of 15 U.S.C. § 1125. Defendants are
3 deliberately, intentionally and unlawfully exploiting Plaintiff's Mark and consumer goodwill for
4 the benefit of Defendants' own products and services Defendants' use of the PAYPROSOL mark
5 constitutes the use of a word, term, name, or any combination thereof, that is likely to cause
6 confusion, mistake, or deception as to the affiliation, connection, origin, sponsorship, approval
7 and/or association of Defendants and their products and services with Plaintiff, within the
8 meaning of 15 U.S.C. § 1125(a)(1).

9 31. In addition, Defendants' use of the PAYPROSOL mark constitutes a commercial
10 use that causes actual and/or likely dilution of the distinctive quality of Plaintiff's trademark by
11 lessening the capacity of the Mark to identify Plaintiff and distinguish its goods and services from
12 the goods and services of others. Defendants knowingly traded on Plaintiff's reputation after
13 Plaintiff's Mark had become well known.

14 32. As a direct and proximate result of Defendants' acts and conduct, Plaintiff is
15 informed and believes, and thereon alleges, that customers and prospective customers have been
16 confused and misled, deceived and mistaken as to the source or sponsorship of Defendants'
17 unauthorized products and services, and have been deterred from purchasing Plaintiff's products
18 and services, in disruption of Plaintiff's business activities. Plaintiff has therefore been damaged
19 and is likely to suffer further damage in an amount to be proven at trial, but in excess of the
20 minimum jurisdiction of this Court. In particular, Plaintiff is entitled to, without limitation,
21 damages for its loss of sales and goodwill, as well as recovery of any and all profit derived by
22 Defendants through their wrongful acts.

23 33. As Defendants' acts are likely to continue, the award of money damages alone will
24 not adequately compensate Plaintiff. By their use of the PAYPROSOL mark, Defendants have
25 caused, and will continue to cause irreparable harm, damages and injury to Plaintiff. Plaintiff's
26 injuries will continue unless restrained by order of this Court. Accordingly, Plaintiff is entitled to
27 preliminary and permanent injunctive relief.

28 WHEREFORE, Plaintiff prays for judgment as set forth below.

THIRD CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(California Civil Code §17200 et seq.)

34. Plaintiff incorporates and realleges the allegations set forth in paragraphs 1 through 33 of this complaint as though fully set forth herein.

35. Plaintiff is informed and believes, and thereon alleges, that Defendants conduct business within California, including, without limitation, the advertising and distribution of its products and services over the Websites.

36. Defendants' conduct described and alleged in this complaint constitutes unfair, unlawful, and fraudulent business practices in violation of California Business & Professions Code §§ 17200 et seq.

37. Defendants have made and disseminated false advertising on the Websites with the intent directly or indirectly to induce the public to enlist the payment processing services and products offered by Defendants as described in this complaint.

38. Defendants knew or reasonably should have known that use of the PAYPROSOL mark on the Websites would deceive and/or confuse customers into believing that Defendants' products and services are produced, endorsed, affiliated and/or associated with Plaintiff.

39. Plaintiff is informed and believes, and thereon alleges, that Defendants use of the PAYPROSOL mark on the Websites was an intentional and deliberate attempt to trade on the Plaintiff's goodwill by unlawfully copying Plaintiff's Mark.

40. As a direct and proximate result of Defendants' acts and conduct, Plaintiff is informed and believes, and thereon alleges, that customers and prospective customers have been confused and misled, deceived and mistaken as to the source or sponsorship of Defendants' unauthorized products and services, and have been deterred from purchasing Plaintiff's products and services, in disruption of Plaintiff's business activities. Plaintiff has therefore been damaged and is likely to suffer further damage in an amount to be proven at trial, and is entitled to the remedies available under Business and Professions Code § 17200 et seq., including but not limited to injunctive relief and restoration of money or property rightfully belonging to Plaintiff but which was acquired by means of Defendants' wrongful acts.

1 WHEREFORE, Plaintiff prays for judgment as set forth below.

2 **FOURTH CAUSE OF ACTION**
3 **DILUTION**
4 **(Business & Professions Code § 14247 *et seq.*)**

5 41. Plaintiff incorporates and realleges the allegations set forth in paragraphs 1
6 through 40 of this complaint as though fully set forth herein.

7 42. Plaintiff's PAYPROS Mark is, and prior to Defendants use of the PAYPROSOL
8 mark continuously has been, widely recognized by the general consuming public of California as
9 a designation of the source of Plaintiff's goods and services. Association arising from the
10 similarity between Defendants' PAYPROSOL mark and Plaintiff's Mark is likely to dilute and
11 impair the distinctiveness of Plaintiff's Mark. Plaintiff is informed and believes and thereon
12 alleges that Defendant's use of the PAYPROSOL mark is likely to harm the reputation of
13 Plaintiff's Mark. Plaintiff has therefore been damaged and is likely to suffer further damage in an
14 amount to be proven at trial, and is entitled to the remedies available under California Business
15 and Professions Code Sections 14247 *et seq.*, including but not limited to injunctive relief and
16 restoration of money or property rightfully belonging to Plaintiff, but which was acquired by
17 means of Defendant's wrongful acts.

18 43. Plaintiff is informed and believes and alleges thereon that Defendant willfully
19 intended to cause the dilution of Plaintiff's Mark.

20 WHEREFORE, Plaintiff prays for judgment as set forth below.

21 **FIFTH CAUSE OF ACTION**
22 **INJUNCTIVE RELIEF**

23 44. Plaintiff incorporates and realleges the allegations set forth in paragraphs 1
24 through 43 of this complaint as though fully set forth herein.

25 45. Plaintiff is informed and believes, and thereon alleges, that Defendants intend to
26 continue to advertise and distribute their goods and services, over the Internet and otherwise using
27 the PAYPROSOL mark, thereby creating confusion as to the affiliation, connection, origin,
28 sponsorship, approval and/or association of Defendants and their related products and services
with Plaintiff.

